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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/583,693

05/31/2007

Leslie Pape

BAC -127- A

3509

79389 7590 01/29/2010  
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EXAMINER

ANDERSON, AMBER R

ART UNIT

PAPER NUMBER

3765

MAIL DATE

DELIVERY MODE

01/29/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<p><b>Application No.</b> 10/583,693</p>	<p><b>Applicant(s)</b> PAPE, LESLIE</p>	
	<p><b>Examiner</b> AMBER R. ANDERSON</p>	<p><b>Art Unit</b> 3765</p>	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 19 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

/GARY L. WELCH/  
Supervisory Patent Examiner, Art Unit 3765

Continuation of 3. NOTE: The amendments adding the limitation "having its longitudinal axis extending along said piece" to the claims require further consideration and further searching.

Continuation of 11. does NOT place the application in condition for allowance because: The applicant's arguments are not persuasive for the following reasons.

Applicant's First Argument: The examiner interprets the word "bonded" in the claim in a manner which is clearly not intended by the applicant.

Examiner's Response: The examiner is giving the term "bonded" its broadest reasonable interpretation which is defined as "fastening firmly together" or "to connect or bind" or "to join" which Holt clearly discloses. Additionally, if the applicant intends for bonded to mean being attached by adhesive then it is suggested that the applicant claim such language.

Applicant's Second Argument: Even though the strips disclosed by Holt have a circular segmental cross-section providing a flat face, this is not to provide a "relatively significant area for bonding" as required by Claim 27 as discussed above.

Examiner's Response: It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Applicant's Third Argument: Such removable weight members are clearly not "integrally" formed with the clothing.

Examiner's Response: The examiner respectfully disagrees. Applicant has defined integrally as "formed as a unit with another part" which by the pocket being placed within the pocket it is in fact integrally formed as the definition would suggest.

Applicant's Fourth Argument: The applicant respectfully contends that Greenfield does not disclose an extension spring as required by Claim 30.

Examiner's Response: The Examiner maintains the position that in Col. 1, lines 36-40 of Greenfield it is stated that the device in combination with the springs provide resistance in the flexure of the joint, i.e. an extension spring, and further wherein the coil has a coaxial component and thus is capable of acting as an extension spring as well.

Applicant's Fifth Argument: Claim 31 requires elongate resilient pieces each having a substantially circular cross-section. As seen in Fig. 5 & 6 of Holt, disclosed therein are members which are substantially semicircular in cross-section and not substantially circular in cross-section as required by Claim 31.

Examiner's Response: The inclusion of the term "substantially" which means 50% or more causes the Holt reference to read on the claimed device of "substantially circular cross-section" which Holt has shown in Fig. 5 & 6 to have at least 50% of the device having a circular cross-sectional shape

Applicant's Sixth Argument: Evenmore so, in the rejection of Claim 27 above, the Examiner herself argued that the members disclosed by Holt have a flat face, and they therefore are not "substantially circular in cross-section."

Examiner's Response: Claims 27 and 31 do not depend on each other thus the examiner is relying on a different interpretation of the cross-section of the resilient members for each claim. Further, see the arguments above regarding the use of "substantially" to define the cross section..